IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11877 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVESH H. DHRUVE DIRECTOR

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11877 of 2003
MR MK VAKHARIA for Petitioner No. 1
MR JITENDRA MALKAN for Respondent No. 1-2
DS AFF.NOT FILED (R) for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The petitioner - Bhavesh H Dhruv is the Director of M/s Microchip Computers Private Ltd.. Premises of his company was searched on 17.08.1996 by the officers of the Central Excise and thereafter show cause notice dated 20.02.1997 was issued to which the petitioner had replied on 05.06.1997. After hearing, the Dy.Commissioner, Central Excise, Rajkot passed order dated 12.03.1998 and released the goods seized from the premises of M/s Ace Software and confirmed the duty for the remaining part of the show cause notice. The same was challenged by the petitioner as well as the company in appeals before the Commissioner (Appeals), Customs and Central Excise, Rajkot - respondent no.2 being appeal nos.F.No.V2(MISC)719/Raj/98 and F.No.V2(MISC)717/Raj/98 respectively. However, both the appeals were partly allowed by common order dated 29.09.2000 by the Commissioner (Appeals). However, remaining portion of the order by which their appeals were not accepted, the petitioner and company filed joint appeal before the Customs, Excise & Gold(Control) Appellate Tribunal, West Zonal Bench, Mumbai (for short "CEGAT"). When it had come up for hearing before the CEGAT, it was brought to the notice that when two separate appeals were filed before the Commissioner (Appeals), then two separate appeals were also required to be filed before the CEGAT though order was common in both the appeals. Accordingly, the common appeal filed before the CEGAT was treated as an appeal filed by the company and numbered as E/3680/00-Bom and stay application was numbered as E/Stay-2699/00-Bom filed in the said appeal. The said appeal was thereafter admitted and stay was also granted by the CEGAT on 31.08.2001. (Annexure `D').

#. Thereafter, a separate appeal was filed by the present petitioner as a director of the company being appeal no.E/2756/01-Mum with a stay application no.E/Stay-2262/01. However, the said appeal was delayed by some time. Therefore, the petitioner had filed an application for condonation of delay being application no. E/COD-751/01-Mum in the said appeal. Surprisingly, the said application for condoning delay was rejected by the CEGAT by its order dated 23.01.2003. Hence, this petition.

#. The CEGAT dismissed the delay application of the petitioner by an order dated 23.01.2003. It is a brief order which is reproduced as under :

"ORDER NO.CII/182-84/WZB/2003 dated 23.1.2003
Per Gowri Shankar, Member(Technical)

1. The application is for condonation of delay of seven months in filing this appeal.

2. The applicant is absence and unrepresented despite notice.

3. The contention in the application is that there was a common order of the Commissioner (Appeals) disposing of the appeal by the assessee and the present applicant, and the advocate for the applicant was of the opinion that a common appeal would suffice. It is therefore contended that the applicant should not suffer on account of the wrong interpretation by the advocate.

4. The application is signed by the applicant and countersigned by the Mr.M.C.Dhruve, stated to be his advocate. I do not find it possible to conclude that this amounts to statement of the advocate that he had advised the applicant that a separate appeal is not necessary. It that is to be accepted, an affidavit by the advocate indicating the full details of the advice that were given by him is required. A passing reference in the application for condonation of the delay by the advocate conveniently taking the blame on himself would not be sufficient. I therefore decline to condone the delay.

5. Accordingly, the appeal is dismissed as barred by limitation."

#. Thus, appeal of the petitioner came to be dismissed as having become time barred with the rejection of his application for condonation of delay filed in the appeal.

#. Mr.Vakharia for the petitioner vehemently submitted that the reasons assigned by the learned CEGAT for rejecting his application for condonation of delay was not at all proper. He submitted that sufficient cause was shown for condoning the delay in filing the appeal late. But inspite of it, the CEGAT rejected the same on flimsy grounds. He submitted that the CEGAT ought to have kept in mind the fact that initially the petitioner had filed a joint appeal with the company which was infact within the period of limitation and the said appeal is admitted with stay granted in it in favour of the company. It is only because of technical grounds, the petitioner was compelled to file separate appeal

which was time barred. Therefore, the learned Tribunal ought to have condoned the delay and entertain the appeal of the present petitioner - director. We find, lot of force in the submission made by Mr.Vakharia. Having regard to the facts and circumstances of the case, Mr.Malkan learned standing counsel for the respondents was hardly in a position to support the order passed by the CEGAT.

#. The fact which is not in dispute is that initially joint appeal of the petitioner and company was admitted and stay also granted in favour of the company. Technically, the Tribunal was right in pointing out to the appellants that they were required to file two separate appeals and therefore that appeal was restricted as an appeal filed on behalf of the company and in view of that if separate appeal was filed by the present petitioner before the CEGAT, then delay in filing the same ought to have been condoned by the CEGAT on the ground mentioned in the application for condoning the delay. There is no reason for the advocate to make incorrect statement and the on the facts of this case, in our considered opinion the learned advocate rightly took the blame on his shoulder. By refusing the condonation of delay in filing the appeal, the CEGAT committed jurisdictional error which is required to be corrected by this court in its writ jurisdiction. Otherwise, it would cause grave injustice to the petitioner.

#. In view of the above discussion, this petition is allowed and the impugned order dated 23.01.2003 `Annexure A' passed by the CEGAT is hereby quashed and set aside and delay application no.E/COD-751/01-Mum filed in appeal no.E/2756/01 before the CEGAT is accepted and the CEGAT is directed to take up the main appeal no. E/2756/01 on its file along with stay application and pass appropriate orders on it in accordance with law. Rule is made absolute with no order as to costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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